IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR.

S.B.CIVIL WRIT PETITION NO.4366/2004

M/s. Rajhans Marmo & Mines P.Ltd. Kelwa Rajsamand

Versus

State of Rajasthan & Ors.

DATE OF ORDER :: 02-12-2004

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr. Vinnet Kothari, for the petitioner.
Mrs. Vidhyavati Bohra, for the respondents.

Heard learned counsel for the parties.

Brief facts of the case are that the petitioner was denied the benefit of incentive scheme i.e. Sales Tax Incentive Scheme for Industries, 1987 on the ground that the petitioner's unit started commercial production after the period within which the benefit could have been made available to them. The benefit is based upon the interpretation of Explanation of Section(a) read with Explanation Section 2 of the Incentive Scheme 1987. The petitioner challenged the action of the respondent by filing Original Application in the year 1997 before the Tax Tribunal which was transferred to the High Court after

abolition of the said Tribunal and, therefore, the Original Application of the petitioner was registered as SBCWP No.3382/1999. The petitioner's writ petition was allowed by the judgment of this Court dated 7.4.2003. The following direction was issued to the respondent-

> "Therefore, the writ petitions of the petitioners deserve to be allowed and the same are accordingly allowed. The impugned orders of rejection for the grant of benefit under the Incentive Scheme of 1987, passed by the respondents on 15.10.1997 and 12.11.1997 are set aside. The matter is remanded back to the District Level Screening Committee for reconsideration of the matter of petitioners with respect to grant of benefit under the Incentive Scheme of 1987".

It appears that in pursuance of the judgment of this Court dated 7.4.2003, the respondent considered the case of the petitioner again and held that petitioner is entitled for the benefit of the scheme from 15.10.1997 to 14.9.2004.

Now petitioner's grievance is that the respondents have wrongly treated the petitioner entitled for the benefit of the Scheme from 15.10.1997 as it should have been from the order of the Rajasthan Tax Tribunal dated 9.1.1998, when the Rajasthan Tax Tribunal passed the interim order and allowed the petitioner to avail the benefit under the Scheme of 1987. According to learned counsel for the petitioner, the petitioner could have

availed the benefit of the Incentive Scheme only upon issuance of a certificate by Member Secretary of appropriate Screening Committee under sub-clause(d) of Clause 7 of the Incentive Scheme of 1987. According to learned counsel for the petitioner, the respondents themselves treated the petitioner's application as not completed in all respect as required under sub-clause (d) of Clause 7 of the Scheme of 1987 and the respondent issued a letter dated 15.10.97 Annexure-5 stating therein that the petitioner is not eligible for the benefit under the Scheme. The petitioner could availed benefit only when the Tax Tribunal passed the interim order dated 9.1.1998 by which the Tribunal held that the "petitioner shall be at liberty to avail of benefit under the Scheme as its own risk till next date of hearing."

Learned counsel for the respondents submitted that as per the sub-clause (d) of Clause 7 of the Scheme of 1987, the date of benefit can be from the date of application of the applicant submitted for availing the benefit of the scheme of 1987, however, in this case, the benefit was given to the petitioner of the Scheme from 15.10.1997 which is the date on which petitioner was informed that he is not eligible to avail the benefit. According to learned counsel for the respondents that order was set aside by the order of this Court in the writ petition of petitioner (SBCWP No.3382/1999) and, therefore,

the respondent granted the benefit of the Scheme to the petitioner from 15.10.1997.

I considered the submissions of learned counsel for the parties and perused the record. Sub-clause (d) of Clause 7 of the Scheme of 1987 as under:-

> "The benefit of the Incentive Scheme shall be available from the date of the application filed by the applicant unit completed in all respects, [as certified by the Member-Secretary of the appropriate Screening Committee] and such benefits shall be subject to the provisions of the Act."

A bare perusal of sub-clause (d) of Clause 7 of the Scheme of 1987, it is clear that the applicant unit could have availed the benefit of the scheme from the date of application only when a completion certificate is issued by the Member-Secretary to the appropriate Screening Committee upon finding that the application filed by the applicant is complete in all respect. This provision clearly reveals that mere submitting of application for benefit of the scheme cannot make one entitle to avail the benefit of the scheme. The applicant can take advantage of the Scheme during pendency of his prayer only when it is certified by the Member Secretary of the Committee under sub-clause (b) of Clause 7 of the Scheme of 1987.

In view of the above, there is no force in the submission of learned counsel for the respondent that the petitioner could have availed the benefit of Incentive Scheme of 1987 from the date of his filing the application. Even otherwise also, there is no reason for holding that the petitioner was entitled for the benefit of the Scheme of 1987 from 15.10.1997 because this is not the date of his application seeking benefit under the Scheme of 1987.

In view of the above, the writ petition deserves to be allowed. Hence, allowed. It is held that the petitioner shall be entitled for the benefit of the Scheme of 1987 not from 15.10.97 but from 9.1.1998 i.e. the date of interim order passed on petition of the petition.

[PRAKASH TATIA],J.

Praveen